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EX PARTE

May 6, 1999

Ms. Magalie Roman Salas
Secretary, Federal Communication Commission
445 12th Street, N.W.
Washington, DC 20554

Re: Ex Parte Presentation of Covad Communications Company in CC Docket No. 98-141, Merger of SBC and Ameritech

Dear Ms. Salas,

On May 6, 1999, Thomas M. Koutsky of Covad Communications Company provided the attached oral testimony at the Public Forum on SBC Communications Inc. and Ameritech Corporation, Applications for Transfer of Control.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.206(a)(2) of the Commission's rules.

Sincerely,

Thomas M. Koutsky
Assistant General Counsel
Phone: (202) 434-8902

cc: Robert Atkinson
Thomas Krattenmaker
Michelle Cary
Bill Dever

ORAL COMMENTS OF COVAD COMMUNICATIONS COMPANY
(AS DELIVERED)

THOMAS M. KOUTSKY
MAY 6, 1999

Thank you for this opportunity to comment today on the proposed merger of SBC and Ameritech. My name is Tom Koutsky, Assistant General Counsel of Covad Communications Company.

Covad is living proof that you don't need to have a market capitalization of $150 billion and 200,000 employees to participate in the global data telecommunications market. With only slightly more than 400 employees, we have deployed an advanced DSL services network that passes over 11 million homes and businesses throughout the country.

Nevertheless, we are deeply concerned about ILEC attempts to undermine the fundamental principles of the Act. This merger is one of those attempts.

Unable to unchain themselves from a circuit-switched, bandwidth-rationing mentality, these firms think they need a larger base of incumbent networks to support growth. They've gone down this path rather than do what is really needed—a fundamental restructuring that supports the deployment of open, competitive, broadband networks.

As described by Mr. Sallet this morning, merger conditions come in two flavors—structural and behavioral. Covad believes in structural remedies, especially the separation of ILEC wholesale and retail operations. But if the applicants are unwilling to undertake that restructuring themselves—and if the Commission and Wall Street are unwilling to undertake that restructuring for them—behavioral conditions may be able to achieve some of the benefits that a wholesale/retail split would achieve.

First, the Commission must recognize that with regard to OSS, unbundled elements, collocation, and interconnection provisioning,

"separate" will never be "equal". As long as CLECs use separate interfaces and order channels, while the ILEC provides retail services through a different process, we will always be fighting battles as to whether that separate CLEC process is discriminatory.

As CLECs grow, the inherent unequal nature of these separate processes will also grow. Scale improvements in those processes will probably always lag ILEC investment in its own retail operations. Indeed, we just heard from Mr. Smith about SBC's "next day" retail installation in California. Just try to order today and receive an unbundled loop tomorrow.

The Commission could simply require applicants to use CLEC OSS and other wholesale services in providing their retail services. Or—applicants could be given a choice: utilize the CLEC OSS for *all* of your retail orders, or provide CLECs with a substantial "discrimination discount" off the price of UNEs and collocation. The discrimination discount would compensate CLECs for the delay and costs that inevitably result from that separate and unequal process.

Second, the Commission should require the posting of a substantial performance bond in the event that applicants' wholesale performance falls below commercially reasonable standards.

Performance bonds are not new—in fact, performance bonds are common in commercial relationships where you have a demonstrably incompetent supplier.

This bond—perhaps used in conjunction with the FCC expedited complaint process—would compensate the FCC and competitive carriers for costs and damages arising from any failure to comply with the Act.

The bond should be of sufficient magnitude that the merged entity would feel substantial financial pressure in the event that it does not come into compliance with the law. A performance bond of such size would have the beneficial effect of creating an incentive for the applicants to come into compliance swiftly and completely.

And we know—and experience every day—that these companies are not currently in compliance with the law.

I appreciate this opportunity to be heard today, and thank you for your attention.